

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

SHAWN FREED,

Plaintiff,

v.

JACOB BOLLENSKY, *et al.*,

Defendants.

Case No. 3:23-cv-00417-MMD-CLB

ORDER

Pro se Plaintiff Shawn Freed, who is incarcerated at Northern Nevada Correctional Center, brings this action against Defendants Jacob Ballensky,¹ Bart Ortiz, Ty Trouten, and the City of Elko under 42 U.S.C. § 1983. Before the Court is United States Magistrate Judge Carla Baldwin's Report and Recommendation (ECF No. 3 ("R&R")), recommending that the Court dismiss Freed's Complaint (ECF No. 1-1) with leave to amend. Freed timely filed an objection (ECF No. 4 ("Objection")) to the R&R. Given Freed's clarification that he is not challenging the constitutionality of his incarceration, the Court rejects the R&R.

I. BACKGROUND²

On May 6, 2022, City of Elko Police Officer Jacob Ballensky arrested Shawn Freed at gun point for driving without a valid license. (ECF No. 1-1 at 2-3.) Before arresting Freed, Ballensky did not verify the status of Freed's driver's license through dispatch, nor did he attempt to verify this with Freed. (*Id.* at 2, 12.) Running the license plate would not

¹As indicated in the transcripts attached in Freed's Complaint, Defendant Ballensky's name is spelled incorrectly in the case caption and the body of the Complaint. (ECF No. 1-1 at 8.)

²The facts in this section are adapted from Freed's Complaint and Objection. (ECF Nos. 1-1, 3.) The Court has omitted any legal conclusions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

1 have revealed information about the status of his license because the vehicle was insured
2 and registered to a driver with a valid license. (*Id.* at 3-4.)

3 During the arrest, City of Elko Police Officer Bart Ortiz searched Freed's vehicle.
4 (*Id.* at 2-3.) The search uncovered narcotics. (*Id.* at 10.) Freed was then charged with one
5 count of possession of a Schedule I or II controlled substance. (*Id.* at 8.) Officers
6 Ballensky and Ortiz testified at Freed's preliminary hearing. (*Id.* at 2, 5, 8.) In his sworn
7 testimony, Officer Ortiz made statements about how and where he had obtained evidence
8 that were unsupported by body camera footage and inconsistent with testimony from
9 Freed's preliminary hearing. (*Id.* at 5.)

10 The Elko City Police Department and Elko City Police Chief Ty Trouten did not
11 discipline Officers Ballensky or Ortiz for their actions. (*Id.* at 6.) The police department
12 also did not provide training on the constitutionality of Officers Ballensky's and Ortiz's
13 actions. (*Id.*)

14 Freed filed this 42 U.S.C. § 1983 suit asserting Fourth, Fifth, and Fourteenth
15 Amendment claims against Defendants for the excessive use of force during his arrest,
16 arresting him without first verifying his identity, perjury, and having a department-wide
17 policy of inaction regarding these and similar infractions. (*Id.* at 2-6.) Freed seeks
18 injunctive relief and monetary damages. (*Id.* at 7.)

19 **II. DISCUSSION**

20 This Court "may accept, reject, or modify, in whole or in part, the findings or
21 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party
22 timely objects to a magistrate judge's report and recommendation, the Court is required
23 to "make a de novo determination of those portions of the [report and recommendation]
24 to which objection is made." *Id.* The Court's review is thus de novo because Freed timely
25 filed his Objection. (ECF No. 4.)

26 Freed objects to Judge Baldwin's recommendation that the Court dismiss the
27 Complaint with leave to amend because his claims could render his conviction invalid.
28 (ECF Nos. 3 at 4, 4 at 1-2.) Freed clarified that he is currently serving time for a different

conviction in a separate matter, and he attached to his Objection a state court order dismissing with prejudice the charge arising from the interactions at issue here. (ECF No. 4 at 2-5.) Freed thus is not challenging the fact or the duration of his confinement but rather seeks remedies for alleged constitutional violations which in no way could “demonstrate the invalidity of [his] conviction.” *Cf. Heck v. Humphrey*, 512 U.S. 477, 481-82 (1994). Accordingly, the Court rejects Judge Baldwin’s recommendation to dismiss Freed’s complaint with leave to amend.

III. CONCLUSION

It is therefore ordered that Plaintiff’s objection (ECF No. 4) to Judge Baldwin’s Report and Recommendation (ECF No. 3) is sustained.

It is further ordered that Judge Baldwin’s Report and Recommendation (ECF No. 3) is rejected.

It is further ordered that Plaintiff’s complaint (ECF No. 1-1), application to proceed in forma pauperis (ECF No. 1), and motion for the appointment of counsel (ECF No. 1-2) will proceed to screening.

The Clerk of Court is directed to correct the spelling of Defendant Ballensky’s name on the docket.

DATED THIS 23rd Day of October 2023.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE